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D.B. CIVIL SPECIAL APPEAL NO.933/2006.  
[VISHWANATH VS. SMT. KESHARI DEVI @ KESAR DEVI &  
ORS.]

DATED : 09.02.2007

HON'BLE MR. RAJESH BALIA, J.  
HON'BLE MR. CHATRA RAM JAT, J.

Mr.B.N.Kalla for appellant.

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Having heard learned counsel for the appellant we do not find any merit in this appeal. The appellant is a defendant in the suit filed by Smt. Kesar Devi. It appears in the said suit the document on which the plaintiff had relied was alleged to be in possession of one Gopi Ram S/o Nagarmal and on an application moved on behalf of defendant, present appellant, said Gopi Lal was directed to produce the original partition deed dated 11.04.1955 in the court. The said Gopi Ram had produced a copy of the document and stated that original is not finding with him and he does not remember whether he has given to somebody else or it has misplaced. He further stated that document is registered with Registrar, Calcutta and certified copy whereof may be obtained from Registrar Calcutta. He further made a prayer that he may not be compelled to produce the document in question as due to his old age he is not able to further exert for searching the document.

The defendant petitioner had moved an application under order 13 Rule 10 r.w. Order 11 Rule 11 CPC for dismissing the suit/drawing adverse inference against him for non-production of original document. The same has been rejected by the learned trial judge.

The defendant Vishwanath has filed a writ petition before the Court that either the suit ought to have been dismissed or at least an order for drawing adverse inference for non production of the documents should have drawn against the plaintiff.

Admittedly, document in question is not in possession of the plaintiff but is in possession of Gopi Ram. For non production of document by third party, in whose possession the original document is alleged to be, no adverse inference can be drawn against any of the parties to the suit. It may at best a ground for seeking permission to lead secondary evidence to prove the document by the party relying on the same. The question of dismissing the suit for non production of document by a stranger to the suit simply does not arise.

In these circumstances the learned Single Judge

in our opinion has rightly dismissed the writ petition. The appeal also fails and is dismissed.

**[CHATRA RAM JAT], J.**

**[RAJESH BALIA], J.**

**mamta**